

HENRY SEIBEL
CLARA SEIBEL

IBLA 81-21

Decided March 30, 1982

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. F-23398.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976: Assessment Work--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or a notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

APPEARANCES: Henry and Clara Seibel, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated September 9, 1980, of the Alaska State Office, Bureau of Land Management (BLM), declaring the Bear #8 placer mining claim, located in the Fairbanks recording district, abandoned and void.

On January 10, 1977, Bert C. Pettit filed a location notice for this claim with BLM, which stated that the claim was located on October 15, 1976. The owner did not file evidence of annual assessment work for 1978 with BLM until January 19, 1979. ^{1/} By a document filed with BLM on August 29, 1979, Bert C. Pettit transferred his interest in the Bear #8 claim to Henry and Clara Seibel, appellants herein. On November 3, 1980, appellants filed with BLM a notice of intention to hold the claim. The decision appealed herein declared the claim void because the evidence of annual assessment work was not timely filed for the assessment year 1978.

Appellants say in their statement of reasons submitted with their notice of appeal filed September 24, 1980, that they were advised by BLM that the evidence of assessment work had not been timely filed for 1978 when they recorded the transaction. They state that they later learned that the assessment work was completed prior to the due date but the original claimant's wife had failed to file it timely.

Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim or millsite located prior to the date of approval of FLPMA (October 21, 1976), to file, within the 3-year period following October 21, 1976, a copy of the official record of the notice or certificate of location of such claim or site. Regulations implementing section 314(b) are found at 43 CFR 3833.1.

Appellants' predecessor, Bert C. Pettit, complied with this requirement when he recorded with BLM in January 1977. BLM recognized the timely recordation but held that appellant had not timely filed by December 30, 1978, either evidence of the performance of annual assessment work or a notice of intention to hold the claim as required by 43 CFR 3833.2-1(a). This regulation specifically provides:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

^{1/} Evidence of assessment work for 1979 was timely filed, and on Nov. 3, 1980, appellants filed a notice of intention to hold the claim.

In a recent case Harvey A. Clifton, 60 IBLA 29 (1981), this Board extensively reviewed the same sequence of events. In that case we considered the validity of mining claims located before October 21, 1976, recorded with BLM in 1977, where no evidence of assessment work or intention to hold was filed on or before December 30, 1978, but followed by filing of evidence of assessment work or intention to hold by October 22, 1979. We determined that the lack of filing by December 30, 1978, of either evidence of assessment or intention to hold the claims as required by the regulation in 43 CFR 3833.2-1(a) is a deficiency that is subject to curative action.

[1] In Clifton we compared the statutory and regulatory requirements at length and concluded as follows:

After extensive consideration, this Board is now convinced that the requirement of filing evidence of assessment work or notice of intention to hold with BLM for claims located on or before October 21, 1976, must be met at some point during the 3-year period following enactment, of the recordation statute, 43 U.S.C. § 1744 (1976), i.e., by October 22, 1979, and by December 30 of each year following such initial filing of evidence of assessment work or notice of intention to hold. We do not challenge the authority of BLM, asserted in the decision below to adopt regulations pursuant to the provisions of the Mining Law of 1872, as amended, 30 U.S.C. §§ 22-24, 26-28, 29, 30, 33-35, 37, 39-42 (1976), requiring the owners of unpatented mining claims to file notice of intention to hold or evidence of assessment work with BLM by December 30 of the year following recordation with BLM of the certificate of location. However, we cannot affirm a decision conclusively presuming a claim to be abandoned and thus void in the face of evidence to the contrary where the statutory filing requirements imposed by section 314 of FLPMA have been complied with. This statute imposes a conclusive presumption of abandonment for failure to comply with the filing requirements established therein, notwithstanding evidence showing claimant did not intend to abandon the claim. Lynn Keith, 53 IBLA 192, 196-97, 88 I.D. 369, 372 (1981). With respect to filings that are deficient for failure to conform to the requirements of the regulation, but which meet the statutory requirements of section 314, the deficiency does not give rise to a conclusive presumption of abandonment but rather to a curable defect of which claimant should be given notice and an opportunity to rectify prior to any decision voiding the claim. Heidelberg Silver Mining Co., Inc., 58 IBLA 10, 12 (1981); Ted Dilday, 56 IBLA 337, 341, 88 I.D. 682, (1981); Feldslite Corporation of America, 56 IBLA 78, 81-83, 88 I.D. 643, (1981). This principle was cited as significant by the Tenth Circuit Court of Appeals in a recent decision upholding the validity of the regulations:

We conclude that the Secretary has not ignored § 1744(c) which assumes that even defective filings put the Secretary on notice of a claim, and we hold that once on notice, the Secretary cannot deem a claim abandoned merely because the supplemental filings required only by § 3833 -- and not the statute -- are not made. This is also the Secretary's view: failure to file the supplemental information is treated by the Secretary as a curable defect. A claimant who fails to file the supplemental information is notified and given thirty days in which to cure the defect. If the defect is not cured, "the filing will be rejected by an appealable decision." [Footnote omitted.]

Topaz Beryllium Co. v. United States, 649 F.2d 775, 778 (10th Cir. 1981).

Harvey A. Clifton, supra at 33, 34.

As indicated, appellants in this case had satisfied the statutory requirements for the initial recordation of the claim and the initial filing of annual assessment work by October 22, 1979. They had not satisfied the regulatory requirement by filing his evidence of assessment work or notice of intent to hold by December 30, 1978. Where a claimant fails to comply only with the regulations he is to be given notice of the defect and 30 days to comply. If compliance is not then achieved within the allowed time the claim may be declared abandoned and void, in an appealable decision. Topaz Beryllium Co. v. United States, supra; Heidleberg Silver Mining Co., Inc., supra. Unless this course of action is followed the claim cannot properly be declared abandoned and void.

We note in this case that the deficiency has already been rectified with Pettit's filing of January 19, 1979, of the 1978 assessment work.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded to BLM for further action.

Gail M. Fraizer
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

